IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 6555 of 2006

1. Nashik Dioceason Council
and others ..Petitioners

vs.

1. Joint Charity Commissioner
Nashik Region and others ..Respondents

Shri V.A.Gangal for petitioners.
Shri A.H.Palekar, A.G.P. for respondent State.

CORAM: S.C.DHARMADHIKARI J.
14th June, 2007

P.C.

1. The petitioners are aggrieved by the order dated 7th February, 2006 passed on an application which has been preferred for challenging maintainability of the application under sec.41D of the Bombay Public Trust Act, 1950, filed by the respondents. The petitioners desired that the issue of maintainability be tried as a preliminary issue. The Joint Charity Commissioner by the impugned order has declined to frame the issue of maintainability as a preliminary issue. In my view, the prima facie observatrion in para 1 of the impugned order to the effect that an argument that the application is not tenable can always be canvassed and considered irrespective of rejection of this application sufficiently protects the rights and contentions of the petitioners.

2. As is rightly observed by the Joint Charity

Commissioner that evidence in the matter is yet to begin and it is for the applicants who have preferred the main application to establish as to whether a case under sec.41D is made out or not. Therefore, it is not as if the petitioners would have no opportunity to raise the plea of maintainability of the application. That issue arises in the light of pleadings and could be tried with other issues by the Joint Charity Commissioner. That the Joint Charity Commissioenr should do so uninfluenced by his observations in the impugned order need not be stated.

3. Accordingly, the petition is dismissed but keeping open the challenge of the petitioners to the maintainability of application under sec.41D. All contentions which are raised in the present petition would be available for being urged while arguing the issue of maintainability. Equally, it would be open for the respondents/applicants to urge that the application is tenable. Keeping such contentions open the instant petition is disposed of.

4. The Joint Charity Commissioner to endeavour and dispose of the proceedings as expeditiously as possible and in any event by 31st December, 2007.

(S.C.DHARMADHIKARI J.)